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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

COAST REHABILITATION SERVICES,
INC.,

Plaintiff and Respondent,

v.

GRAY DUFFY, LLP,

Defendant and Appellant.

2d Civil No. B245940
(Super. Ct. No. 1383264)
(Santa Barbara County)

Defendant law firm agreed to pay plaintiff \$350 per hour for services performed by "a qualified rehabilitation professional and/or life care planner." The law firm disputed plaintiff's bill, claiming most of the services were not performed by a qualified professional. Plaintiff sued for breach of contract. The trial court found for plaintiff and awarded the entire amount billed as contract damages, plus prejudgment interest, costs and attorney fees.

We reduce the judgment by \$630 for amounts billed for clerical work. In all other respects, we affirm.

FACTS

Gray Duffy, LLP, (Gray) is a law firm in Encino. Gray contracted with Coast Rehabilitation Services, Inc., (Coast) to create a life care plan for a client

in a medical malpractice action. Ed Bennett (Bennett) is the principal and president of Coast.

The contract provided that Coast would be paid a "[p]rofessional hourly rate" of \$350 per hour and \$450 per hour for testifying at trial. The contract specified that the "[p]rofessional hourly rate is charged regardless of who performed said services within the offices of [Coast], although services will be provided by a qualified rehabilitation professional and/or life care planner."

The contract also provided for interest at the rate of 12 percent per annum on invoices not paid within 30 days. The contract contained a clause providing for an award of attorney fees to Coast in the event of any litigation arising from the agreement.

As the malpractice action progressed, Kevin Park, an attorney in the Gray law firm, requested Coast to provide a loss of household duties evaluation and an adult vocational evaluation, as well as the life care plan. Coast billed Gray \$17,455.85 for its services.

Coast's billing included 1.8 hours or \$630 for time spent by Jennifer Onnen¹ (Onnen), and 36.55 hours, or \$12,950 for time spent by Andrew Jackson (Jackson).

Bennett testified that California does not have a license for rehabilitation counselors. He has certifications from professional organizations. He is a certified rehabilitation counselor, life care planner and disability specialist. Jackson is certified by the "workers compensation bureau, bureau of rehabilitation."

Onnen testified that she worked for Coast for 21 years. She said her duties were "[c]lerical, billing, phones, scheduling, periodic research, transcription [and] collections." Onnen said the reports were a "joint effort" between Bennett and Jackson. "Mr. Jackson may have done most of the billing, but it was all in guidance by Mr. Bennett."

¹ We have been unable to independently calculate the time billed by Onnen, but Coast does not dispute the amount.

The trial court found in favor of Coast. The court awarded Coast \$17,455.85 for breach of contract plus \$4,706.80 in prejudgment interest. The court also awarded Coast \$14,504.50 in attorney fees.

DISCUSSION

I.

Gray contends the trial court erred in awarding Coast damages for secretarial time and Jackson's time billed at \$350 per hour.

Where, as here, the parties do not rely on extrinsic evidence to interpret a contract, interpretation is a question of law. (*Wolf v. Walt Disney Pictures and Television* (2008) 162 Cal.App.4th 1107, 1126.) Here the contract provides for an hourly rate of \$350 per hour regardless of who performs the services within Coast's office. But the provision is limited by the statement that "services will be provided by a qualified rehabilitation professional and/or life care planner."

Under no reasonable interpretation of the contract can the type of clerical work performed by Onnen be deemed services "provided by a qualified rehabilitation professional and/or life care planner." There is no evidence she is so qualified. Moreover, clerical work is ordinarily deemed part of the office overhead. One would not expect it to be billed separately, and certainly not at \$350 per hour. We reduce the award of damages by \$630.

The amount billed for work performed by Jackson is, however, another matter. Bennett testified that Jackson is certified by the "workers compensation bureau, bureau of rehabilitation." Onnen testified that the reports prepared for Gray were a "joint effort" between Bennett and Jackson. The trial court could reasonably conclude that Jackson was qualified and performing work as a "rehabilitation professional and/or life care planner."

II.

Gray contends the trial court abused its discretion in awarding Coast attorney fees and costs.

Coast filed its complaint as an unlimited jurisdiction civil case. An unlimited civil case is a case in which the amount in controversy exceeds \$25,000. (Code Civ. Proc., §§ 86, subd. (a); 88.) The trial court has the discretion to deny plaintiff costs where the judgment could have been rendered in a court of lesser jurisdiction. (*Id.*, § 1033, subd. (a).) In determining whether a judgment could have been rendered in a court of lesser jurisdiction, the trial court does not include an award of attorney fees. (*Steele v. Jensen Instrument Co.* (1998) 59 Cal.App.4th 326, 331.)

Here the trial court awarded Coast \$17,445.85 plus \$4,706.80 in prejudgment interest for a total of \$22,162.55. Even reducing the award by \$630 and the interest on that amount, the total is close enough to the jurisdictional limit that the trial court did not abuse its discretion.

The judgment is reduced by \$630 and the prejudgment interest on that amount. In all other respects, the judgment is affirmed. Costs are awarded to respondent.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Donna M. Geck, Judge
Superior Court County of Santa Barbara

Gray Duffy LLP, John D. Duffy and Kevin H. Park for Defendant and
Appellant.

Law Offices of Jeffrey S. Young and Jeffrey S. Young for Plaintiff and
Respondent.